

ORIGINAL

NEW APPLICATION



0000140840

BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP

Arizona Corporation Commission

DOCKETED

2012 NOV 30 PM 4:08

SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

NOV 30 2012

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR APPROVAL OF TWO
QUALIFYING FACILITY AGREEMENTS

DOCKET NO. E-01345A-12-0482

APPLICATION

In compliance with Arizona Corporation Commission ("Commission") Decision No. 52345 (July 27, 1981), Arizona Public Service Company ("APS" or "Company") herein seeks approval of two agreements that provide for electric service to, and purchase of energy from, Qualifying Facilities ("QFs") located within the Company's service territory. The Agreement for Electric Service to a Qualifying Facility and for Purchase of Energy from a Qualifying Facility between APS and CSE Operating I, LLC (the "Buckeye Agreement") requires APS to purchase the entire kWh output of the Buckeye Campus generating facility, a 600 kW facility utilizing biomass as a renewable fuel source as described in this application.

The Agreement for Electric Service to a Qualifying Facility and for Purchase of Energy from a Qualifying Facility between APS and Solar and Renewables Management, LLC (the "Southern Agreement") calls for APS to purchase the entire kWh output of the Southern Generation generating facility, a 600 kW biomass generating resource identical in technology and configuration to the Buckeye Campus facility. Both the Buckeye Campus and the Southern Generation facilities are located on dairy farms in Maricopa County near the Town of Buckeye and utilize agricultural livestock waste as the renewable fuel source.¹

¹ Throughout this application, APS refers to the Buckeye Agreement and the Southern Agreement together as "the Agreements."

1 As discussed below, APS and other jurisdictional utilities are required by federal
2 legislation and the Federal Energy Regulatory Commission ("FERC") to purchase energy
3 from certain QFs. The Commission acknowledged this requirement when it developed its
4 Cogeneration and Small Power Production Policy (the "Policy") in 1981. The Policy, in
5 pertinent part, contains the following requirements for contracts with QFs over 100 kW:

6 All contracts for the sale and/or purchase of energy between the utilities
7 and the QF's shall be submitted to this Commission for review and
8 approval. The contracts should include, but not be limited to, the [same
9 terms and conditions earlier identified for QF's 100 kW or under in size]...
If the Commission fails to act within 30 days after receipt of the proposed
contract, approval of the contract is considered granted.²

10 The Agreements were executed in compliance with APS's obligations under these
11 requirements.

12 **I. Regulatory Background**

13 In 1978, the United States Congress enacted the Public Utility Regulatory Policies
14 Act (PURPA)³ to encourage the conservation of electric energy and natural gas as part of a
15 broad response to the global energy crisis of the late 1970's. Section 210 of PURPA
16 accomplishes this goal by promoting the development of alternative energy resources
17 through the establishment of a class of generating facilities, known as Qualifying Facilities
18 or "QFs", which receive by law special rate and regulatory treatment.

19 Under PURPA, FERC was authorized to develop rules requiring electric utilities to
20 both purchase electricity from and sell electricity to QFs. FERC subsequently issued
21 regulations requiring utilities to purchase energy and capacity from QFs at rates equal to the
22 utility's "avoided cost," which is generically defined as the incremental energy and
23 capacity cost the utility would otherwise incur if not for the energy purchased from the QF.⁴

24 Although PURPA is a federal statute whose administration lies with FERC,
25 implementation of the statute, including the determination of a utility's "avoided cost," is
26 largely relegated to state authorities. Therefore, while PURPA and FERC regulations
27

28 ² Commission Decision No. 52345, Cogeneration and Small Power Production Policy, Section V, Paragraphs B and C.

³ 16 U.S.C. 824a-3 (enacted November 9, 1978).

⁴ Order No. 69 in FERC Docket No. RM79-55 dated February 19, 1980; 18 CFR §292.303-304.

1 require rates for purchases from QFs to be just and reasonable to the ratepayers of the
2 utility, in the public interest, non-discriminatory, and not in excess of the electric utility's
3 "avoided cost," these rates are set by the appropriate state regulatory authority.⁵

4 In response to this obligation, the Commission adopted the Policy in Decision No.
5 52345. The Policy states that the Commission encourages the development of cogeneration
6 and small power production in order to promote equity, efficiency, and conservation with
7 regards to the production and sale of electricity in Arizona. Two classes of QFs were
8 created by the Policy: QFs with a capacity rating of 100 kW and less, and QFs with a
9 capacity rating of over 100 kW. No specific rates or standard contracts were required for
10 QFs over 100 kW, but the Policy suggests that standard rates developed for QFs 100 kW
11 and under are to be used as the basis for development of rates for QFs over 100 kW.
12 Commission Decision No. 56271 (December 15, 1988) modified the Policy by requiring
13 utilities to file optional rates for standby, supplemental, and maintenance power needs of
14 QFs over 100 kW.

15 In 2005, Congress enacted the Energy Policy Act of 2005 ("2005 EAct")⁶, a set of
16 sweeping energy policy changes which modified Section 210 of PURPA by eliminating the
17 utility's obligation to purchase QF power if the utility demonstrates that a QF can sell its
18 power in a competitive wholesale market for energy and capacity. If such a demonstration
19 cannot be made, then the mandatory purchase provisions of PURPA continue. As with the
20 earlier legislation, FERC was tasked with developing regulations to implement the
21 changes.⁷

22 FERC thereafter determined that QFs operating in states where a FERC-approved
23 ISO or RTO exists creates a rebuttable presumption that the QF has access to competitive
24 wholesale markets.⁸ In addition, FERC employed a rebuttable presumption that a QF with
25 a generating capacity at or less than 20 MW does *not* have nondiscriminatory access to a
26 competitive market, and utilities continue to be required to purchase power from these

27 ⁵ 18 CFR §292.301-308.

28 ⁶ 42 U.S.C. 15801 (enacted August 8, 2005).

⁷ Order No. 688 in Docket No. RM06-10-000 dated October 20, 2006.

⁸ 18 CFR §292.309-310.

1 QFs.^{9,10} The 2005 EPAct did not require changes to the Commission's existing Policy.

2 **II. Description of the Qualifying Facilities**

3 FERC has set forth certain criteria that must be met for a generating facility to be
4 considered a small power production QF:¹¹

- 5 1. The facility cannot be larger than 80 megawatts;
- 6 2. The primary energy source of the facility must be biomass, waste, renewable
7 resources, geothermal resources, or any combination thereof, and 75 percent or more of the
8 total energy input must be from these sources; and
- 9 3. The facility must have filed a notice of self-certification with FERC.

10 Both the Buckeye Campus and the Southern Generation facilities meet these
11 requirements. Generators at both sites have a capacity rating of 600 kW, well below the
12 maximum threshold set by FERC, and the fuel source is 100% agricultural livestock waste
13 from which manure digester biogas produced by an anaerobic digester is utilized to
14 generate electricity. As noted earlier, each generator is located on a dairy farm, where cow
15 manure is flushed from feed lanes and milking parlors through a solid separator to a
16 covered earthen lagoon located on the farm property. In the lagoon, bacteria anaerobically
17 digest the livestock waste, creating greenhouse gases (primarily methane). A piping system
18 installed under the cover of the lagoon transports the gases to the adjacent generating
19 facility, where the gas is used to produce electricity. Each QF has an annual expected
20 production of 3,675 MWh.

21 Both facilities have filed a self-certification of QF status pursuant to FERC's rules
22 and regulations (18 CFR §292.207), and FERC has accepted both of the filings.¹²

23
24
25 ⁹ 18 CFR §292.309(d)(1).

26 ¹⁰ The Company does not intend to attempt rebuttal of a determination of discriminatory access for the Buckeye
Campus or the Southern Generation facilities.

27 ¹¹ 18 CFR §§292.203(a), 292.204(a) and (b).

28 ¹² The Buckeye Campus facility filed for QF status on September 21, 2011 and received FERC acceptance on
September 22, 2011 under Docket No. QF11-501-000 (accession # 201109225022). The Southern Generation facility
also filed for QF status on September 21, 2011, receiving FERC acceptance on September 22, 2011 under Docket No.
QF11-502-000 (accession #201109225023). For small power production QFs, FERC does not generate any additional
documents other than the electronic acknowledgement of receipt of the generator's self-certification.

III. Description of the Agreements

On November 15, 2012, APS executed both the Buckeye Agreement (attached to this filing as Exhibit 1) and the Southern Agreement (attached to this filing as Exhibit 2) for the sale and purchase of electric energy from QFs with CSE Operating I, LLC and Solar and Renewables Management, LLC, respectively. CSE Operating I, LLC is a special purpose entity formed to develop, construct and own the Buckeye Campus generating facility. Likewise, Solar and Renewables Management, LLC is a special purpose entity formed to develop, construct and own the Southern Generation generating facility.¹³ The Agreements are virtually identical and provide APS with the full output of both facilities for successive one-year terms on an evergreen basis, with a sixty (60) day termination notice by either party. Energy will be supplied to APS on a non-firm basis.

As noted earlier, PURPA requires that rates for purchases from QFs must be just and reasonable to the ratepayers of the utility, in the public interest, and must not discriminate against cogenerators or small power producers. Additionally, purchase rates must be based on the utility's avoided cost. Pursuant to these requirements, pricing for purchases under the Agreements is derived from the Company's non-firm time-of-use avoided costs as approved by the Commission and set forth in APS Rate Schedule EPR-2.

PURPA also requires that utilities must provide electric energy to QFs at rates which are just and reasonable, in the public interest, and which do not discriminate against cogenerators and small power producers. Therefore, energy provided to the QFs will be priced at the applicable Commission approved APS rate for similarly-situated retail customers.¹⁴

Additionally, the terms and conditions required in the Commission's Policy for agreements with QFs are addressed either in the Agreements themselves or in the Company's Service Schedule 2, Terms and Conditions for Energy Purchases from Qualified Cogeneration and Small Power Production Facilities, a copy of which is attached

¹³ The parent company for both special purpose entities is Environmental Capital Management, LLC, an Arizona limited liability company in good standing with the Commission as of November 21, 2012 (File Number L-1246048-2).

¹⁴ As the QFs will not require standby, supplemental, or maintenance power, and are not large enough to qualify for Rate Schedule E-36 (Station Use), the facilities will be served under one of the E-32 family of rate schedules.

1 to each agreement.

2 **IV. Conclusion**

3 The Buckeye Agreement and the Southern Agreement comply with federal and
4 Commission requirements both for sales to and purchases from small power production
5 generating facilities, and APS hereby submits this application in compliance with the
6 Commission's Policy which requires that the Company request approval of all contracts
7 over 100 kW for the sale and/or purchase of energy between APS and the QF. Therefore,
8 APS respectfully requests that the Commission:

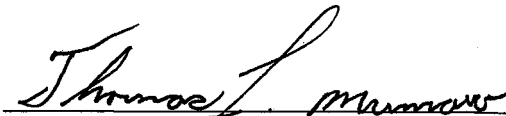
9 1. Find the Buckeye Agreement is in compliance with all applicable
10 requirements for a contract between APS and a Qualifying Facility;

11 2. Find the Southern Agreement is in compliance with all applicable
12 requirements for a contract between APS and a Qualifying Facility; and

13 3. Approve both Agreements.

14 RESPECTFULLY SUBMITTED this 30th day of November, 2012.

15
16 By:



17 Thomas L. Mumaw

18 Attorney for Arizona Public Service Company

19 ORIGINAL and thirteen (13) copies
20 of the foregoing filed this 30th day of
21 November, 2012, with:

22 Docket Control
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, Arizona 85007

26 Chester Dodson

EXHIBIT 1

**Agreement between APS and
CSE Operating I, LLC
(Buckeye Campus)**

**AGREEMENT FOR ELECTRIC SERVICE TO A QUALIFYING FACILITY
AND FOR PURCHASE OF ENERGY FROM A QUALIFYING FACILITY**

THIS AGREEMENT is made and entered into this 15 day of November, 2012, by and between ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation ("APS"), and CSE Operating 1, LLC, a Bio-Gas ("Generator") (each of which may be referred to in this Agreement individually as a "Party" and together as the "Parties").

WHEREAS, APS is an electric utility company that owns, operates and maintains electric transmission and distribution facilities in Arizona;

WHEREAS, APS is regulated by the Federal Energy Regulatory Commission ("FERC") and the Arizona Corporation Commission ("ACC"), and is subject to the Public Utility Regulatory Policies Act of 1978 as amended by the Energy Policy Act of 2005 ("PURPA");

WHEREAS, Generator owns and operates a Bio-Gas generator facility located at 29115 W. Broadway Road, Buckeye, AZ 85326 (the "Property"), which is a qualifying co-generator or small power production facility ("QF") under PURPA with a nameplate capacity that is less than two (2) megawatts;

WHEREAS, Generator desires to purchase from APS electric utility service, if any, needed to operate the QF, and desires to sell the energy generated by its QF to APS and to interconnect with APS's electric transmission or distribution system in order to do so; and

WHEREAS, APS and Generator desire to set forth in this Agreement the terms and conditions pursuant to which such interconnection, purchases and sales shall be made;

NOW, THEREFORE, in consideration of the following mutual covenants, the Parties hereby agree:

1. **Generator Representations.** Generator represents and warrants to APS that its QF has a maximum available capacity of 600 kW that its QF has been certified as a QF pursuant to the requirements of PURPA and that its QF has met all requirements of APS Service Schedule 2, attached hereto as Appendix A. Generator agrees to provide to APS, immediately upon request throughout the term of this Agreement, any documentation reasonably acceptable to APS to substantiate the representations made herein regarding the status of its QF.
2. **Quantity.** APS shall furnish, sell and deliver to Generator, and Generator shall purchase from APS, any electric power and energy not generated by

the QF which Generator may need to operate the QF, subject to the provisions of this Agreement. Generator estimates its initial power needs to be approximately 5 kW. The rate that shall apply to any such purchase of energy by Generator shall be the APS retail rate schedule that is applicable to station use power or other applicable retail rate. The terms and conditions of such rate schedule (which specifically include, among other things, billing terms) are attached hereto as Appendix B and are subject to change from time to time as described therein.

3. **Meters.** Any electric power and energy sold and delivered to Generator as provided herein shall be metered in accordance with the terms of one or more of APS Rate Schedules 1, 2, 4, 8 and 15, as applicable. Generator shall be responsible for all costs associated with metering as specified therein.
4. **Rates.** Generator agrees to sell to APS, and APS agrees to purchase from Generator, all output from the QF as measured by the electric energy delivered to the point of interconnection with APS's transmission or distribution system not to exceed the maximum available capacity stated in Paragraph 1 above on an hourly basis, pursuant to the terms and conditions of APS Rate Schedule EPR-2, a copy of which is attached hereto as Appendix C and which shall be subject to change from time to time in APS's sole discretion, and subject to approval by the ACC if applicable, as described below. For purposes of clarity, although Rate Schedule EPR-2 specifically applies to generating facilities smaller than 100 kW, the rate shall apply to the QF under this Agreement. Specifically, the rate that shall apply is the rate referenced in Rate Schedule EPR-2 as "for non-residential customers with an 11 a.m. to 9 p.m. on-peak rate for Non-Firm Power," subject to the provisions of the following paragraph. Such rate shall be subject to change from time to time. Changes may include, but shall not be limited to, changes in rate levels, general changes to Rate Schedule EPR-2, or the restructuring of Rate Schedule EPR-2 to address conditions or requirements that may differ based on the type of generating facility.

All such electric energy shall be supplied on a non-firm basis to APS; provided, however, that in the event Generator satisfies the requirements for Firm Power as that term is defined in Rate Schedule EPR-2 or any applicable successor rate schedule, then the electric energy shall be supplied on a firm basis to APS for so long as Generator satisfies such requirements. Generator shall comply with the APS Marketing and Trading Scheduling Communication Protocol attached hereto as Appendix D. Generator shall provide to APS its operation contact information no later than ninety (90) days prior to the start of generation and shall give APS prompt prior notice of any changes to such contact information. Generator shall provide written Notice to APS not less than thirty (30)

days prior to any planned maintenance or as soon as reasonably practicable in the event that thirty (30) days' advance Notice is not possible (including an event of unplanned maintenance). Such Notice shall describe the nature and expected duration of the maintenance and shall be in form and substance reasonably acceptable to APS.

5. **APS Right to Refuse.** Notwithstanding anything in this Agreement to the contrary, APS may refuse to purchase electric energy from Generator in certain circumstances, consistent with the provisions of 18 C.F.R. §292.304.
6. **Telemetry.** To the extent required in the Interconnection Agreement (as that term is defined in Paragraph 9, below): (a) Generator shall, in cooperation with the transmission provider, be responsible for the design, procurement and installation of industry standard remote terminal units ("RTUs") in accordance with and as required pursuant to the Interconnection Agreement (at no cost to APS hereunder); (b) Generator shall be responsible for all needed connections from the QF to the RTUs; and (c) such connections must be compatible with the RTUs installed by the Transmission Provider. Generator shall provide APS with Notice as far in advance as reasonably possible if and when any QF control system changes are anticipated.
7. **Billing.** Billing for all output delivered to APS as set forth in Paragraph 4 above shall occur on a monthly basis, according to the billing cycle applicable to such delivery. APS will generate the billing invoice based on data that it receives from the bidirectional meter for the QF. Such invoice will reflect either payment owed by or to APS or that no payment is owed by either Party and may reflect a net payment owed based on the application of the relevant billing rates to the metered output. The owing Party shall be required to remit such payment no later than ten (10) business days following the date of the invoice, or in accordance with the terms of the invoice if specified otherwise therein. Any dispute between the Parties regarding any such invoice shall be resolved in accordance with the billing dispute provisions contained in APS Service Schedule 1, attached hereto as Appendix E.
8. **Credit.** Generator shall be subject to the credit and security provisions contained in APS Service Schedule 1, attached hereto as Appendix E.
9. **Interconnection.** Generator shall not be permitted to interconnect to APS's transmission or distribution system unless it has executed an Interconnection Agreement and/or Interconnection Construction Agreement with the transmission provider, together with any and all other ancillary agreements as may be required by the interconnection and transmission provider (together, the "Interconnection Agreement"). A

copy of the Interconnection Agreement shall be attached to this Agreement as Appendix F within ten (10) days after it is executed. Generator shall pay all costs associated with its interconnection of the QF, as specified in the Interconnection Agreement, including costs associated with installation and maintenance of any meters and metering equipment. Generator shall at all times operate the QF in accordance with the terms of the Interconnection Agreement, which shall specifically include all safety and protective standards as well as APS's rights to disconnect the QF from its transmission or distribution system. The electrical characteristics of the QF shall also conform to any standards established by APS, including but not limited to those set forth in the Interconnection Agreement, which may include but are not limited to voltage, current, frequency, harmonics, and automatic synchronization.

10. **APS Access to Property.** APS shall have the right to enter Generator's Property at all reasonable times to inspect the QF and to ensure that it is being operated in compliance with APS's safety and operating standards, and with all other applicable safety laws, rules and regulations. APS shall also have the right at all reasonable times to enter Generator's Property to read meters and to verify the accuracy of Generator's meters. Such inspections shall not relieve Generator of its obligation to maintain the QF and related facilities in a safe and satisfactory operating condition and otherwise in accordance with the terms of the Interconnection Agreement.
11. **Insurance.** In connection with Generator's performance of its duties and obligations under this Agreement, Generator shall maintain, at its sole cost and expense and for the duration of the term of this Agreement plus three (3) years thereafter, liability insurance in accordance with the requirements contained in the applicable Interconnection Agreement. In addition, within ten (10) days after receipt of a request from APS, Generator shall deliver to APS certificates of insurance for any or all policies required pursuant to the Interconnection Agreement. Such certificates shall include at least the following information: (a) the name of the insurance company, policy number and expiration date; and (b) the coverage and limits on coverage. Generator shall provide APS with at least thirty (30) days' written Notice prior to any material changes in or cancellation of any required insurance policies.
12. **Notices.** All notices, requests, statements or other correspondence required hereunder (each, a "Notice") shall be made as specified in Appendix G to this Agreement. Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business

day. Notice by overnight United States mail or courier shall be effective on the next business day after it was sent. A Party may change its addresses by providing Notice of the same in accordance herewith.

13. **Indemnity.** Generator shall indemnify and hold harmless APS and its officers, directors and employees from and against liability for any injuries or damages caused by Generator or any third parties by and through the operation of the QF and any related equipment, by any failure by Generator or its designee to maintain the QF and/or related equipment in satisfactory and safe operating condition, by any breach of this Agreement by Generator, or by any violation by Generator (or any third party acting on its behalf) of Schedule EPR-2 or any other applicable rate schedule or tariff, and shall further hold such parties harmless from all claims, including attorneys' fees.
14. **Term.** This Agreement shall be effective as of the date first written above and shall remain in effect for a term of one (1) year thereafter. This Agreement shall thereafter continue for successive terms of one (1) year each, unless terminated by either Party by written Notice designating a termination date that is not less than sixty (60) days following the date of such Notice.
15. **Applicable Law.** This Agreement shall be subject to all applicable federal and state laws and regulations. This Agreement shall be interpreted and construed in accordance with the laws of the State of Arizona.
16. **Assignment.** This Agreement shall be binding upon the Parties and their respective successors and assigns, provided that Generator may not assign its interest in this Agreement without the prior written consent of APS, which consent may be withheld by APS in its sole discretion.
17. **Entire Agreement.** This Agreement, together with any incorporated tariff, rate and interconnection agreement, contains the entire agreement and understanding between the Parties with respect to the subject matter hereof.
18. **Regulatory Approval.** Each Party's obligations under this Agreement are expressly conditioned upon approval by the ACC. APS will provide Generator with Notice of ACC approval within five (5) Business Days after such approval occurs.
19. **Amendments.** This Agreement can only be modified by a written agreement signed by both Parties; provided, however, that the rates

referenced in Paragraphs 2 and 4 herein may be subject to change without requiring a written modification to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

ARIZONA PUBLIC SERVICE COMPANY

CSE OPERATING I, LLC

By: BJ Albert

By: Curt Kaminer

Name: BRAD ALBERT

Name: Curt Kaminer

Title: General Manager - Resource Mgmt

Title: Manager

Date: 11/15/12

Date: 11-2-12

EXHIBIT 2

**Agreement between APS and
Solar and Renewables Management, LLC
(Southern Generation)**

**AGREEMENT FOR ELECTRIC SERVICE TO A QUALIFYING FACILITY
AND FOR PURCHASE OF ENERGY FROM A QUALIFYING FACILITY**

THIS AGREEMENT is made and entered into this 15 day of November, 2012, by and between ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation ("APS"), and Solar & Renewables Management, LLC, a Bio-Gas ("Generator") (each of which may be referred to in this Agreement individually as a "Party" and together as the "Parties").

WHEREAS, APS is an electric utility company that owns, operates and maintains electric transmission and distribution facilities in Arizona;

WHEREAS, APS is regulated by the Federal Energy Regulatory Commission ("FERC") and the Arizona Corporation Commission ("ACC"), and is subject to the Public Utility Regulatory Policies Act of 1978 as amended by the Energy Policy Act of 2005 ("PURPA");

WHEREAS, Generator owns and operates a Bio-Gas generator facility located at 29505 W. Southern Ave, Buckeye, AZ 85326 (the "Property"), which is a qualifying co-generator or small power production facility ("QF") under PURPA with a nameplate capacity that is less than two (2) megawatts;

WHEREAS, Generator desires to purchase from APS electric utility service, if any, needed to operate the QF, and desires to sell the energy generated by its QF to APS and to interconnect with APS's electric transmission or distribution system in order to do so; and

WHEREAS, APS and Generator desire to set forth in this Agreement the terms and conditions pursuant to which such interconnection, purchases and sales shall be made;

NOW, THEREFORE, in consideration of the following mutual covenants, the Parties hereby agree:

1. **Generator Representations.** Generator represents and warrants to APS that its QF has a maximum available capacity of 600 kW, that its QF has been certified as a QF pursuant to the requirements of PURPA and that its QF has met all requirements of APS Service Schedule 2, attached hereto as Appendix A. Generator agrees to provide to APS, immediately upon request throughout the term of this Agreement, any documentation reasonably acceptable to APS to substantiate the representations made herein regarding the status of its QF.
2. **Quantity.** APS shall furnish, sell and deliver to Generator, and Generator shall purchase from APS, any electric power and energy not generated by

the QF which Generator may need to operate the QF, subject to the provisions of this Agreement. Generator estimates its initial power needs to be approximately 5 kW. The rate that shall apply to any such purchase of energy by Generator shall be the APS retail rate schedule that is applicable to station use power or other applicable retail rate. The terms and conditions of such rate schedule (which specifically include, among other things, billing terms) are attached hereto as Appendix B and are subject to change from time to time as described therein.

3. **Meters.** Any electric power and energy sold and delivered to Generator as provided herein shall be metered in accordance with the terms of one or more of APS Rate Schedules 1, 2, 4, 8 and 15, as applicable. Generator shall be responsible for all costs associated with metering as specified therein.
4. **Rates.** Generator agrees to sell to APS, and APS agrees to purchase from Generator, all output from the QF as measured by the electric energy delivered to the point of interconnection with APS's transmission or distribution system not to exceed the maximum available capacity stated in Paragraph 1 above on an hourly basis, pursuant to the terms and conditions of APS Rate Schedule EPR-2, a copy of which is attached hereto as Appendix C and which shall be subject to change from time to time in APS's sole discretion, and subject to approval by the ACC if applicable, as described below. For purposes of clarity, although Rate Schedule EPR-2 specifically applies to generating facilities smaller than 100 kW, the rate shall apply to the QF under this Agreement. Specifically, the rate that shall apply is the rate referenced in Rate Schedule EPR-2 as "for non-residential customers with an 11 a.m. to 9 p.m. on-peak rate for Non-Firm Power," subject to the provisions of the following paragraph. Such rate shall be subject to change from time to time. Changes may include, but shall not be limited to, changes in rate levels, general changes to Rate Schedule EPR-2, or the restructuring of Rate Schedule EPR-2 to address conditions or requirements that may differ based on the type of generating facility.

All such electric energy shall be supplied on a non-firm basis to APS; provided, however, that in the event Generator satisfies the requirements for Firm Power as that term is defined in Rate Schedule EPR-2 or any applicable successor rate schedule, then the electric energy shall be supplied on a firm basis to APS for so long as Generator satisfies such requirements. Generator shall comply with the APS Marketing and Trading Scheduling Communication Protocol attached hereto as Appendix D. Generator shall provide to APS its operation contact information no later than ninety (90) days prior to the start of generation and shall give APS prompt prior notice of any changes to such contact information. Generator shall provide written Notice to APS not less than thirty (30)

days prior to any planned maintenance or as soon as reasonably practicable in the event that thirty (30) days' advance Notice is not possible (including an event of unplanned maintenance). Such Notice shall describe the nature and expected duration of the maintenance and shall be in form and substance reasonably acceptable to APS.

5. **APS Right to Refuse.** Notwithstanding anything in this Agreement to the contrary, APS may refuse to purchase electric energy from Generator in certain circumstances, consistent with the provisions of 18 C.F.R. §292.304.
6. **Telemetering.** To the extent required in the Interconnection Agreement (as that term is defined in Paragraph 9, below): (a) Generator shall, in cooperation with the transmission provider, be responsible for the design, procurement and installation of industry standard remote terminal units ("RTUs") in accordance with and as required pursuant to the Interconnection Agreement (at no cost to APS hereunder); (b) Generator shall be responsible for all needed connections from the QF to the RTUs; and (c) such connections must be compatible with the RTUs installed by the Transmission Provider. Generator shall provide APS with Notice as far in advance as reasonably possible if and when any QF control system changes are anticipated.
7. **Billing.** Billing for all output delivered to APS as set forth in Paragraph 4 above shall occur on a monthly basis, according to the billing cycle applicable to such delivery. APS will generate the billing invoice based on data that it receives from the bidirectional meter for the QF. Such invoice will reflect either payment owed by or to APS or that no payment is owed by either Party and may reflect a net payment owed based on the application of the relevant billing rates to the metered output. The owing Party shall be required to remit such payment no later than ten (10) business days following the date of the invoice, or in accordance with the terms of the invoice if specified otherwise therein. Any dispute between the Parties regarding any such invoice shall be resolved in accordance with the billing dispute provisions contained in APS Service Schedule 1, attached hereto as Appendix E.
8. **Credit.** Generator shall be subject to the credit and security provisions contained in APS Service Schedule 1, attached hereto as Appendix E.
9. **Interconnection.** Generator shall not be permitted to interconnect to APS's transmission or distribution system unless it has executed an Interconnection Agreement and/or Interconnection Construction Agreement with the transmission provider, together with any and all other ancillary agreements as may be required by the interconnection and transmission provider (together, the "Interconnection Agreement"). A

day. Notice by overnight United States mail or courier shall be effective on the next business day after it was sent. A Party may change its addresses by providing Notice of the same in accordance herewith.

13. **Indemnity.** Generator shall indemnify and hold harmless APS and its officers, directors and employees from and against liability for any injuries or damages caused by Generator or any third parties by and through the operation of the QF and any related equipment, by any failure by Generator or its designee to maintain the QF and/or related equipment in satisfactory and safe operating condition, by any breach of this Agreement by Generator, or by any violation by Generator (or any third party acting on its behalf) of Schedule EPR-2 or any other applicable rate schedule or tariff, and shall further hold such parties harmless from all claims, including attorneys' fees.
14. **Term.** This Agreement shall be effective as of the date first written above and shall remain in effect for a term of one (1) year thereafter. This Agreement shall thereafter continue for successive terms of one (1) year each, unless terminated by either Party by written Notice designating a termination date that is not less than sixty (60) days following the date of such Notice.
15. **Applicable Law.** This Agreement shall be subject to all applicable federal and state laws and regulations. This Agreement shall be interpreted and construed in accordance with the laws of the State of Arizona.
16. **Assignment.** This Agreement shall be binding upon the Parties and their respective successors and assigns, provided that Generator may not assign its interest in this Agreement without the prior written consent of APS, which consent may be withheld by APS in its sole discretion.
17. **Entire Agreement.** This Agreement, together with any incorporated tariff, rate and interconnection agreement, contains the entire agreement and understanding between the Parties with respect to the subject matter hereof.
18. **Regulatory Approval.** Each Party's obligations under this Agreement are expressly conditioned upon approval by the ACC. APS will provide Generator with Notice of ACC approval within five (5) Business Days after such approval occurs.
19. **Amendments.** This Agreement can only be modified by a written agreement signed by both Parties; provided, however, that the rates

referenced in Paragraphs 2 and 4 herein may be subject to change without requiring a written modification to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

ARIZONA PUBLIC SERVICE COMPANY

SOLAR & RENEWABLES
MANAGEMENT, LLC

By: BJ Albert

Name: BRAD ALBERT

Title: General Manager - Resource Mgr

Date: 11/15/12

By: Curt Kaminer

Name: Curt Kaminer

Title: Manager

Date: 11-2-12